

MR2919-9/C  
Serial Number: 10/716,544  
Reply to Office Action dated 24 June 2008

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**REMARKS/ARGUMENTS**

At the outset, the courtesies extended by the Examiner and her Supervisory Examiner in granting the 15 October 2008 interview are appreciatively noted. At the interview, the references cited by the Examiner in the 24 June 2008 Office Action were discussed in light of the clarifying amendments proposed to the Claims by the undersigned Attorney, as set forth herein.

Responsive to the 24 June 2008 Office Action and the discussions had at the interview, Claims 43-44 and 46 are now amended for further prosecution with the other pending Claims. It is believed that with such amendment of Claims, there is a further clarification of their recitations.

In the Office Action, the Examiner maintained the earlier rejection of Claims 43-54 under 35 U.S.C. § 103(a) as being unpatentable over the Schiff reference in view of the Javitt, et al. reference, further in view of the I, et al. reference. The Examiner again acknowledged that Schiff and Javitt, et al. fail to disclose the determination of a second data rate in the adaptive manner claimed, but cited I, et al. for disclosing as much.

As each of the independent Claims 43-44 and 46 is now amended to further clarify, Applicants' claimed apparatus and method include among their combinations of features determining a second data rate based upon the received power level of the "communication data received by the second transceiver from the first transceiver." As these Claims further clarify, the second data rate is adaptively "set according to a maximum data rate maintained in inversely proportional relation to the distance directly between the first and second transceivers."

The full combinations of these and other features as now more clearly recited by

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the pending Claims are nowhere disclosed by the cited references. The deficiencies of the Schiff and Javitt, et al. disclosures have already been addressed in the earlier Responses, and indeed readily acknowledged by the Examiner. As for I, et al., the deficiencies of its disclosures are even more apparent in view of newly-amended independent Claims 43-44 and 46.

Unlike Applicants' system and method, I, et al. does not seek to keep the data rate for its mobile stations down within an appropriate maximum limit. In fact, the very point of I, et al. is to find opportunities to temporarily raise the data rates of certain mobile stations up beyond their normally allowable maximum limits (which are fixed for most of the expected range of operation).

In considering requests to exceed data rate limits, I, et al. looks to the activity in the immediate neighborhood of cells, as indicated by the relative pilot signal strengths of the base station in those cells. Only when these pilot signal strengths are sufficiently below either a fixed threshold level or a variably calculated average level does I, et al. grant a requesting mobile station permission to use a high data rate burst. The risk of excessive interference during the burst is minimized in such manner. This is entirely different, both in purpose and effect, from adaptively determining a data rate between communicating first and second transceivers "based upon the received power level of the ... communication data received by the second transceiver from the first transceiver," as Claims 43-44 and 46 now more clearly recite.

Although I, et al. makes incidental mention of a distance parameter – for instance, in evaluating relative pilot strengths of the neighboring cells' base stations – such distance parameter is not used in the manner claimed, to "maintain[]" a "maximum data

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rate ... in inversely proportional relation" thereto (as Claims 43-44 and 46 recite). Nor is such distance parameter actually directed to "the distance directly between said first and second transceivers," as the Claims further recite.

It is respectfully submitted, therefore, that the Schiff, Javitt, et al., and I, et al. references, even when considered together, fail to disclose the unique combinations of elements recited by the pending Claims for the purposes and objectives disclosed in the subject Patent Application.

It is now believed that the subject Patent Application has been placed fully in condition for allowance, and such action is respectfully requested.

If there are any further charges associated with this filing, the Director of Patents and Trademarks is hereby authorized to charge Deposit Account #18-2011 for such additional charges.

Respectfully submitted,  
For: ROSENBERG, KLEIN & LEE



Jun Y. Lee

Registration #40,262

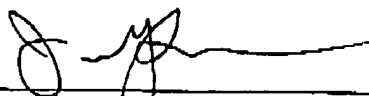
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Suite 101  
3458 Ellicott Center Drive  
Ellicott City, MD 21043  
(410) 465-6678  
Customer No. 04586

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10/17/2008  
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Jun Y. Lee